IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

WP(C).No. 3598 of 2007(C)

PETITIONERS:

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1. NARAYANI AMMAL, W/O.LATE VENKITESWARA IYYER, MOOKAMBI PUTHENMADATHIL, PARAVUTHARA MURI, PARAVUR VILLAGE, NOW RESIDING AT 4125, CHAITHANYA, VITH CROSS, 19TH B OPPOSITE TO CLASSIC MANSION MAL SECOND STAGE, BANGALORE.

2. V.SUBRAMANYA AYYAR, S/O.DO. IN DO. DO.

3. SUBHAMMAL, D/O. DO. & W/O. G.VAIDYANATHAN, IN DO. NOW RESIDING AT BORVELI WEST, PRANNANY NAGAR, D-BLOCK, NEAR WAGIRA NAKA, MUMBAI.

4. V.ANANTHA NARAYANAN, S/O.DO., PARAVUTHARA MURI, PARAVUR VILLAGE, NOW RESIDING AT 2016 AISWARYA, 17TH MAIN, FIRST CROSS HALL, SECOND STAGE.

5. PADMANABHA IYYER, S/O.DO. IN DO., NOW RESIDING AT 5041, ANKI APARTMENT, UP STAIR OF BANK OF MAHARASHTRA, DAHISAN EAST, MAHARASHTRA.

6. V.KRISHNA IYYER, S/O.DO. IN DO. DO. NOW RESIDING AT CHINCHAUDHARA COLONY, H.B.F.C., PUNE, MAHARASHTRA.

7. V.RAMASWAMI IYYER, S/O.DO. IN DO., NOW RESIDING AT 38 CHENNAI MISSION HOSPITAL ROAD, BANGALORE.

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

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RESPONDENTS:
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1. TRAVANCORE DEVASWOM BOARD,
REPRESENTED BY ITS SECRETARY,
TRAVANCORE DEVASWOM BOARD, THIRUVANANTHAPURAM.

2. KONNAMKULANGARA DEVASWOM,
REPRESENTED BY ITS SUB GROUP OFFICER,
KONNAMKULANGARA DEVASWOM, KOTTUVALLY,
N.PARAVUR.

3. KONNAMKULANGARA KSHETHROPADESAKA
SAMITHI, KOTTUVALLY PAKUTHI, REPRESENTED
BY ITS PRESIDENT.

4. KONNAMKULANGARA KSHETHROPADESAKA
SAMITHI, KOTTUVALLY PAKUTHI, REPRESENTED
BY ITS SECRETARY.

BY ADVS. SRI.PHILIP T.VARGHESE --R3 & R4
SRI.THOMAS T.VARGHESE
SRI.M.K.CHANDRAMOHAN DAS,
SRI.K.N.VENUGOPALA PANICKER,
SRI.NAGARAJ NARAYANAN, SC FOR TDB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 3598/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1A. COPY OF THE COMMISSION REPORT.

EXT.P1B. COPY OF THE PLAN ACCOMPANIED BY EXT. P1A.

EXT.P2. COPY OF THE OBJECTION BY RESPONDENTS 1 AND 2 HEREIN TO EXT. P1A AND EXT. P1B.

EXT.P3. COPY OF THE SKETCH PRODUCED BY R1 AND R2.

EXT.P4. COPY OF THE APPLICATION IA NO. 1229/2006 FILED BY THE PETITIONERS DATED 13/07/06.

EXT.P5. COPY OF THE APPLICATION IN IA NO. 1226/06 BY THE PETITIONERS DT. 13/07/2006.

EXT.P6. COPY OF THE OBJECTION FILED BY RESPONDENTS 1 AND 2 TO EXT.P4.

EXT.P7. COPY OF THE ORDER BY MUNSIFF'S COURT NORTH PARAVUR IN IA NO. 1229/06 IN OS NO. 221/02.

EXT.P8. COPY OF THE ORDER BY MUNSIFF COURT, N. PARAVUR IN IA NO. 1226/06 IN OS NO. 221/02.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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M.N.KRISHNAN, J

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W.P.(C) No. 3598 OF 2007

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Dated this the 4th day of October 2007

JUDGMENT

This writ petition is filed challenging Exts.P7 and P8 orders passed in O.S.No.221 of 2002 of the Munsiff's Court, N.Paravur. The suit is one for recovery of possession on the strength of title. Plaintiffs claim right over the property by virtue of a registered pattom chit. There had been previous litigations before the court starting from 1968 onwards. Now the plaint has already been amended and the plaintiffs have claimed right over 45 cents of property in Sy.No.318/6 and 25 cents of property in Sy.No.318/5 making a total of 70 cents. The Commissioner, who inspected the property earlier had produced a plan and a report wherein to the first question he answered that he had measured the property in accordance with pattom chit and marked it in the plan. But the plan shows it otherwise. Defendants 1 and 2 in the suit also filed objection to the said Commissioner's report contending that the property has not been measured with respect to the pattom chit and located and there has been no proper location or identification of the property. In a suit for recovery of possession on the strength of title, where the property is

claimed on the basis of a document, it is necessary to find out which is that property and in case it is not possible to identify, that also has to be found out. So, there must be a clear picture before court regarding the identification or non-identification of the property for a proper disposal of the case with reference to the title deeds relied on by the plaintiffs. The materials available are not sufficient or adequate to hold it either way and therefore I feel it is desirable that the very same Commissioner is deputed, if he is available for the purpose of identifying the property once again with respect to the title deed. The Commissioner shall inspect the property with the assistance of a Taluk Surveyor and attempt to locate the property with the help of the documents relied on by the plaintiffs. There are various methods for identification of the property and the Commissioner can resort to any feasible and possible method and if that cannot be done it, let it be clearly demarcated in the plan and that also can be reported with cogent reasons.

With the above observations, I set aside the order of the learned Munsiff and direct the court to remit the Commissioner's plan and report to the same Commissioner for noting the particulars mentioned in the above paragraphs. If the defendants in the suit want any further particulars to be noted, they may also file a work memo before the Commissioner.

So far as Ext.P8 is concerned, the attempt of the plaintiffs is to direct the defendants to say which is the property. It is virtually nothing but amounting to fishing of evidence and in a suit for recovery of possession on the strength of title deed, it is for the plaintiffs to prove title and identity of the property and not the other way. The rejection of application for answering of interrogatories is confirmed.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-